

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Tessa Yesselman	Team: Squad #4	CCRB Case #: 202103439	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 04/28/2020 4:08 PM	Location of Incident: Jerome Avenue and West 167th Street	Precinct: 44	18 Mo. SOL 10/28/2021	EO SOL 5/4/2022	
Date/Time CV Reported Tue, 05/25/2021 1:33 PM	CV Reported At: CCRB	How CV Reported: Mail	Date/Time Received at CCRB Tue, 05/25/2021 1:33 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Timothy Burke	03879	950130	044 DET

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM John Latanzio	08320	963599	123 PCT
2. PO Dylan Mannion	15150	966689	MELD
3. PO Hanna Cottignies	00468	966519	044 PCT
4. PO Mark Buono	22456	962276	044 PCT
5. PO Christopher Alvarado	06589	961611	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SGT Timothy Burke	Discourtesy: Sergeant Timothy Burke spoke discourteously to § 87(2)(b)	
B.SGT Timothy Burke	Abuse: Sergeant Timothy Burke damaged § 87(2)(b) property.	
C.SGT Timothy Burke	Force: Sergeant Timothy Burke used physical force against § 87(2)(b)	
D.SGT Timothy Burke	Abuse: Sergeant Timothy Burke detained § 87(2)(b)	
E.SGT Timothy Burke	Abuse: Sergeant Timothy Burke detained § 87(2)(b)	
§ 87(2)(g), § 87(4-b)		

Case Summary

On June 7, 2021, § 87(2)(b) filed this complaint with the CCRB via written letter (**01 Board Review**).

On April 28, 2020, at approximately 4:08 p.m., § 87(2)(b) was driving in his car with two passengers, § 87(2)(b) and § 87(2)(b). Police Officer John Latanzio and Police Officer Hanna Cottignies, both of the 44th Precinct, stopped § 87(2)(b) vehicle in the vicinity of Jerome Avenue and West 167th Street in the Bronx. PO Latanzio requested additional units. Sergeant Timothy Burke, of the 44th Precinct Detective Squad, responded. Sgt. Burke spoke discourteously to § 87(2)(b) (**Allegation A, Discourtesy:** § 87(2)(g) and broke § 87(2)(b) front driver window with his asp (**Allegation B, Abuse of Authority:** § 87(2)(g)). Sgt. Burke participated in the use of force against § 87(2)(b) (**Allegation C, Force:** § 87(2)(g)). Sgt. Burke detained § 87(2)(b) and § 87(2)(b) (**Allegation D and Allegation E, Abuse of Authority:** § 87(2)(g)).

§ 87(2)(b) was arrested and charged with grand larceny in the 4th degree, criminal possession of a controlled substance in the 5th degree, failure to pay based on stealth, resisting arrest, obstruction of governmental administration in the second degree, and unlawful possession of marijuana in the 2nd degree (**02 Board Review**).

The CCRB obtained body worn camera footage of this incident (**07 Board Review**).

Findings and Recommendations

Allegation (A) Discourtesy: Sergeant Timothy Burke spoke discourteously to § 87(2)(b)
Allegation (B) Abuse of Authority: Sergeant Timothy Burke damaged § 87(2)(b) property.
Allegation (C) Force: Sergeant Timothy Burke used physical force against § 87(2)(b)

§ 87(2)(b) (**03 Board Review**) stated that PO Latanzio and PO Cottignies pulled him over. PO Latanzio approached the driver window and PO Cottignies approached the passenger window. § 87(2)(b) vehicle has four tinted windows and a rubber block around the border of his license plate that can be used to avoid being charged for tolls and blocks “New York” on the top of the license plate from view. PO Latanzio repeatedly asked § 87(2)(b) for his license and registration, and § 87(2)(b) repeatedly refused to provide the materials. § 87(2)(b) held his license and registration in his hands and held the materials up to PO Latanzio, and told PO Latanzio that he could view the materials. PO Latanzio told § 87(2)(b) that he needed to give him the materials and § 87(2)(b) continued to decline to give them to him. PO Latanzio went over the radio to call for more officers to come. Shortly after, somewhere between 10 and 12 police vehicles arrived. Sgt. Burke approached § 87(2)(b) window and yelled, “Get the fuck out of the car.” § 87(2)(b) responded, “I’m not scared of that.” Sgt. Burke took his asp off of his belt and hit the window until it shattered. Sgt. Burke reached through the broken window, unlocked the door, and opened the door. Multiple officers reached into the vehicle, pulled § 87(2)(b) out, and pushed him to the ground.

PO Latanzio (**09 Board Review**) and Sgt. Burke (**19 Board Review**) provided statements consistent with § 87(2)(b) with the exception that they did not recall § 87(2)(b) holding his license and registration up to them or displaying it on his dashboard.

PO Latanzio (**09 Board Review**) stated that he called for additional units to come to the location because he had been asking § 87(2)(b) to provide his license and registration for 10 minutes and

§ 87(2)(b) continued to refuse to give him the materials.

Sgt. Burke (**19 Board Review**) stated that when he arrived at the location he spoke to PO Latanzio, and PO Latanzio told him that § 87(2)(b) was refusing to provide his license and registration. Sgt. Burke then approached the driver window. § 87(2)(b) was in the driver's seat. Sgt. Burke thought that there were passengers in the car, but he could not see clearly inside because of the tinted windows. Sgt. Burke asked § 87(2)(b) "politely" for his license and registration and referred to him as "Sir." § 87(2)(b) ignored Sgt. Burke and did not make eye contact with him. Sgt. Burke stepped back slightly from the car, took his asp off his belt, expanded it to its full length, and said, "Get the fuck out of the car." Sgt. Burke said this to try and get § 87(2)(b) attention and to get § 87(2)(b) to understand that the situation was serious, and he needed to comply. § 87(2)(b) continued to ignore Sgt. Burke and may have been speaking on the phone. Sgt. Burke began to strike § 87(2)(b) window with his asp and did so until he could reach his hand inside to open the door. Sgt. Burke did this because § 87(2)(b) had been disobeying the lawful order to provide his license and registration for 10 minutes. Sgt. Burke broke the window so that he could establish a safe environment for the other officers on the scene and for the people inside of the car. Sgt. Burke also broke the window to gain "control" of the situation. Sgt. Burke could not see inside of the car clearly because the windows were tinted, so he did not know if there were additional people inside of the car, or if there were any weapons in the car. Sgt. Burke stated that people typically only refuse to provide their license and registration if they are attempting to hide something. Sgt. Burke unlocked all of the doors to the car and pulled § 87(2)(b) out of the front seat by his shoulders and arms. § 87(2)(b) resisted Sgt. Burke by tensing his arms and trying to pull his arms in front of his body. Sgt. Burke told officers standing behind him to take § 87(2)(b) into custody, and the officers pulled § 87(2)(b) to the ground and handcuffed him. Sgt. Burke did not recall who the officers were initially. After viewing BWC, Sgt. Burke stated that the officers were PO Alvarado and PO Mannion.

At 1:04 of PO Latanzio's BWC (**24 Board Review**), PO Latanzio asks § 87(2)(b) to lower the window more. § 87(2)(b) responds that he can hear him. PO Latanzio responds that he cannot see him well because of the tints on the windows.

At 1:15 PO Latanzio twice says to lower the window more. § 87(2)(b) asks what he is being pulled over for. PO Latanzio repeatedly says to lower the window. § 87(2)(b) repeatedly asks why he is being pulled over.

At 1:40 PO Latanzio tells § 87(2)(b) that he is being pulled over for the plate covers because they are blocking "New York State." PO Latanzio asks § 87(2)(b) to lower the window again and asks for license, registration, and insurance. PO Latanzio repeatedly asks § 87(2)(b) to put the window down further. PO Latanzio is shining his flashlight into the front driver window.

At 2:30 PO Latanzio asks § 87(2)(b) for his license, registration, and insurance again. At 2:35 § 87(2)(b) responds, "Boss I don't want to do business with you." At 2:40 § 87(2)(b) tells PO Latanzio that he can call his boss. PO Latanzio asks for the materials again. At 2:42 § 87(2)(b) says, "It's right here," and PO Latanzio responds, "Hand it over to me, hand it over to me, hand it over to me." PO Latanzio continues to repeatedly ask for the materials.

At 3:05 PO Latanzio tells § 87(2)(b) to open the door because he is failing to comply with his orders. At 3:25 PO Latanzio asks § 87(2)(b) for his materials again. § 87(2)(b) holds up a card that appears to be the back of a drivers license and says, "It's right here." PO Latanzio tells him that he needs to give him the materials and § 87(2)(b) responds that he does not. PO Latanzio continues to ask for the materials.

At 5:28 PO Latanzio tells § 87(2)(b) to give him his information and § 87(2)(b) responds that he does not want to do business with him.

At 6:25 PO Latanzio tells § 87(2)(b) again to give him his information. § 87(2)(b) refuses to provide the information. PO Latanzio tells § 87(2)(b) that his sergeant is here and is going to speak to

him.

At 6:44 PO Latanzio tells Sgt. Burke that § 87(2)(b) refuses to give him his information. Sgt. Burke tells § 87(2)(b) that he needs to provide his information. § 87(2)(b) appears to be talking on a phone, telling someone where he is. At 6:54 Sgt. Burke taps on the window with his knuckle and says, “Sir,” repeatedly.

At 7:00 Sgt. Burke takes out his expandable asp and opens it to its full length, and says, “Get the fuck out of the car right now.” § 87(2)(b) says, “Yeah, break my window.” Sgt. Burke says, “Get out of the car. Get out of the car right now.”

At 7:08 Sgt. Burke begins hitting § 87(2)(b) window with the asp. Sgt. Burke hits the window 8 times with the asp and says, “Get the fuck out of the car.”

At 7:25 an officer uses his hands to push the rest of the window down. Officers repeatedly tell § 87(2)(b) to get out of the car. § 87(2)(b) responds that he is getting out.

At 7:35 § 87(2)(b) door is opened. It is not clear how the door comes to be open.

At 7:37 § 87(2)(b) is standing outside of the car with his hands behind his back held by PO Latanzio, PO Alvarado, and PO Mannion. PO Alvarado and PO Mannion push § 87(2)(b) down to the ground so that he is face down and on his stomach in the street.

At 7:44, § 87(2)(b) says, “Don’t worry, I’m not going to move. I’m not about to fight with y’all.”

The TRI (21 Board Review) prepared by Sgt. Burke states that the vehicle had tinted windows which obstructed the officers view into the car, and § 87(2)(b) refused to lower his window and refused to provide his license and registration. Sgt. Burke tried to gain voluntarily compliance from § 87(2)(b) and then broke his window with his expandable baton after § 87(2)(b) continued to refuse to comply. § 87(2)(b) refused to exit the car after the window was broken, so he was forcibly taken from the car and brought to the ground.

Police Department v. Pichardo, DAO-DCT Case #201515012 states that officers may use limited profanity towards civilians to gain control of a dynamic situation (22 Board Review).

As per Patrol Guide Procedure 221-01: Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances. If the force used is unreasonable under the circumstances, it will be deemed excessive and in violation of Department policy (20 Board Review).

When appropriate and consistent with personal safety, members of the service will use de-escalation techniques to safely gain voluntary compliance from a subject to reduce or eliminate the necessity to use force. In situations in which this is not safe and/or appropriate, MOS will use only the reasonable force necessary to gain control or custody of a subject. The use of deadly physical force against a person can only be used to protect MOS and/or the public from imminent serious physical injury or death. In determining whether the use of force is reasonable, members of the service should consider the following:

- a. The nature and severity of the crime/circumstances
- b. Actions taken by the subject
- c. Duration of the action
- d. Immediacy of the perceived threat or harm to the subject, members of the service, and/or bystanders
- e. Whether the subject is actively resisting custody
- f. Whether the subject is attempting to evade arrest by flight
- g. Number of subjects in comparison to the number of MOS
- h. Size, age, and condition of the subject in comparison to the MOS

- i. Subject's violent history, if known
- j. Presence of hostile crowd or agitators
- k. Subject apparently under the influence of a stimulant/narcotic which would affect pain tolerance or increase the likelihood of violence.

As per NY Penal Law 195.05: A person is guilty of obstructing governmental administration (OGA) when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an unofficial function, by means of intimidating, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor's intent that the animal obstruct governmental administration (**12 Board Review**).

The courts have found that police officers can damage property only if doing so is reasonably necessary to carry out their duties (Onderdonk v. State, 170 Misc. 2d 155). Refusing to produce one's identification when asked by a police officer is not an independently unlawful act (People v Thomas, 51 Misc. 3d 341) (**10 Board Review**). Ignoring a police officer's request for identification is not a crime, and therefore does not amount to an "independently unlawful act" (People v Estime, 2016 N.Y. Misc. LEXIS 3417) (**11 Board Review**).

Sgt. Burke's use of profanity was brief and used in a limited situation § 87(2)(g)

It is undisputed that § 87(2)(b) repeatedly refused to provide his license and registration to PO Latanzio and Sgt. Burke. § 87(2)(g)

§ 87(2)(b) was initially stopped for a license plate covering, a non-violent and misdemeanor or violation charge, and an offense for which a summons could have been issued to the vehicle- which was safely stopped and surrounded by police vehicles- without § 87(2)(b) compliance in providing his identification. § 87(2)(g)

Sgt. Burke stated that § 87(2)(b) refused to exit the vehicle and that once he was pulled from the vehicle, he resisted arrest by tensing his arms. Video evidence shows that § 87(2)(b) said he would exit the car and was pulled from his seat before given any opportunity to do so. Video of the interaction shows no evidence that § 87(2)(b) resisted physically in any way, and conversely, shows that § 87(2)(b) told the officers that he was not trying to engage in a physical struggle with them. § 87(2)(g)

Allegation (D) Abuse of Authority: Sergeant Timothy Burke detained § 87(2)(b)

Allegation (E) Abuse of Authority: Sergeant Timothy Burke detained § 87(2)(b)

§ 87(2)(b) (04 Board Review) and § 87(2)(b) (06 Board Review) provided statements consistent with one another. They both stated that they had little to no interaction with any officer while they were in the vehicle, and were never given instructions to lower their windows, exit the vehicle, or provide identification.

Sgt. Burke (19 Board Review) stated that he made the decision to remove § 87(2)(b) and § 87(2)(b) from the vehicle and that it was his decision to take them into custody. § 87(2)(b) and § 87(2)(b) were taken into custody for OGA because he “thought” that he remembered them encouraging § 87(2)(b) not to lower his window or provide identification, and they refused to exit the vehicle. Sgt. Burke did not recall if he ever ordered them to exit the vehicle or if he heard any other officer do so. § 87(2)(b) and § 87(2)(b) were taken into custody for OGA and were subsequently released without arrest or DAT.

BWC (24 Board Review) does not show § 87(2)(b) and § 87(2)(b) encouraging § 87(2)(b) not to comply, does not show any substantive conversation between them any officer while they were seated in the vehicle, and does not show any officer ordering them to exit the vehicle until after § 87(2)(b) window was broken and he was removed from the vehicle, at which point officers escort them out of their seats.

As per NY Penal Law 195.05: A person is guilty of obstructing governmental administration (OGA) when he intentionally obstructs, impairs, or perverts the administration of law or other governmental function or prevents or attempts to prevent a public servant from performing an unofficial function, by means of intimidating, physical force or interference, or by means of any independently unlawful act, or by means of interfering, whether or not physical force is involved, with radio, telephone, television or other telecommunications systems owned or operated by the state, or a county, city, town, village, fire district or emergency medical service or by means of releasing a dangerous animal under circumstances evincing the actor’s intent that the animal obstruct governmental administration (12 Board Review).

§ 87(2)(b) and § 87(2)(b) were observers to the vehicle stop. The available evidence shows that they did not interfere in § 87(2)(b) interaction with PO Latanzio or Sgt. Burke, that no officer made any request of them until after they were removed from the vehicle and taken into custody. § 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

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§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g), § 87(4-b)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) (16 Board Review) and § 87(2)(b) (17 Board Review) have been a party.
- § 87(2)(b)
- Sgt. Burke has been a member of service for ten years and has been a subject in 15 CCRB complaints and 44 allegations, of which five were substantiated.
 - 201804152 involved a substantiated allegation of failure to prepare a memo book entry. The Board recommended instructions and the NYPD imposed instructions.
 - 201900379 involved a substantiated allegation of a discourtesy. The Board recommended instructions and the NYPD imposed instructions.
 - 201908431 involved a substantiated allegation of a discourtesy. The Board recommended formal training and the NYPD imposed formal training.
 - 202103883 involved substantiated allegations of threat of force and discourtesy. The Board recommended Command Discipline A and the NYPD imposed Command Discipline B.

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) attorney, Illisa Brownstein personal, emotional, and physical injuries, intentional, reckless and negligent conduct by the NYPD, false arrest and malicious prosecution, and is seeking \$1,000,000 as redress (**05 Board Review**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
[REDACTED]
[REDACTED]
[REDACTED]

Squad: 4

Investigator: Tessa Yesselman SI Tessa Yesselman 3/17/2022
Signature Print Title & Name Date

Squad Leader: Raquel Velasquez IM Raquel Velasquez 3/18/2022
Signature Print Title & Name Date

Reviewer: _____

_____ Signature	_____ Print Title & Name	_____ Date
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